Cr.M.M.O No. 98 of 2007

13.8.2008 Present: Mr. Anoop Rattan, counsel for the petitioner.

Mr. Rajesh Mandhotra, Dy. A.G. for respondent.

Cr.M.P No.485 of 2008.

By means of this application, the petitioner-accused has prayed that the order dated 16.11.2007 passed in Cr.M.M.O No. 98 of 2007 be modified and the day-to-day hearing of the trial be dispensed with and the trial may be ordered to be completed in the normal course of proceedings.

This prayer, to say the least, coming from a person who is accused of an offence punishable under Section 376 and who has been granted bail by this Court on certain conditions is not acceptable. It is indeed surprising and shocking to note that an accused who is on bail now wants to prolong the proceedings when his statement under Section 313 Cr.P.C. already stands recorded. I have been informed that the statement of the accused under Section 313 was recorded on 6th and 7th August, 2008. Shri Anup Rattan, learned counsel for the petitioner contends that the petitioner-accused has filed a list of witnesses and in defence wants to examine 16 witnesses. According to him, the learned trial Court has fixed the trial for 23rd August, 2008 for defence evidence and it may not be possible for the petitioner to produce his entire evidence on the said date. In view of the

earlier order he apprehends that the learned trial Judge may close his evidence.

Even though, I have observed above that the prayer made in the application is very unusual, there can be no manner of doubt that every accused should have a reasonable opportunity to defend himself. On the next date, i.e. 23rd August, 2008 the learned trial Court shall examine the witnesses of the petitioner-accused, if any, present in the Court. Thereafter, the learned trial Court shall fix the case after a period of four weeks, in the last week of September, 2008. The petitioner-accused shall take Dasti summons for the services of his witnesses. The trial cannot be allowed to be prolonged while the petitioner is on bail only on the ground that the petitioner has filed a long list of witnesses and their service may take a long time. No doubt, the expense of summoning the witnesses have to be borne by the State but it shall be the responsibility of the accused to see that witnesses are served. On the date so fixed the witnesses present shall be examined. In case any witness has not been served or does not appear despite service the learned trial Court shall in the case of unserved witnesses give one more opportunity to the accused to serve his witnesses and in the case of served witnesses the

learned trial Court shall use coercive methods to ensure the attendance of the witnesses. The next date shall be fixed in the month of October after the 20th at the convenience of the learned trial Court. If the witnesses are not served even for the date fixed in October which will effectively be the third opportunity to the petitioner-accused to produce his evidence, it shall be presumed that the petitioner-accused is not interested in examining those witnesses and shall not be permitted to examine the witnesses who were not served despite these opportunities granted to him. In case of served witnesses, who are not present, the Court shall use coercive methods to ensure their presence. It is also made clear that in case it is found that the petitioner is unnecessarily delaying the trial the order granting him bail may be recalled.

Keeping in view the aforesaid directions, the time for disposing of the trial is extended upto 30th November, 2008.

Application is disposed of accordingly.

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13th August, 2008 **(Deepak Gupta), J.**

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